that the Supreme Court had no jurisdiction, as section 2, Article 3, of the Constitution conferring original jurisdiction upon the court "in all cases affecting ambassadors . . . and those in which a State shall be a party . . ." merely *distributes,* and does not *confer* jurisdiction; and since a citizen may not sue his sovereign state without its consent. *Duhne v. New Jersey* (Jan. 12, 1920) U. S. Sup. Ct. Oct. Term 1919.

The decision accords wholly with previous authority. The result desired by the complainant is, however, being achieved by another road. The daily press carries reports, under date of January 19, of leave granted Rhode Island, through its Attorney General, to contest the validity of the amendment and the enforcement act.

DAMAGES—INTEREST—UNLIQUIDATED AMOUNT—WRONGFUL DEATH.—In an action under the federal Employers' Liability Act to recover for the death of her husband, the plaintiff claimed interest on the amount of the verdict from the date of the death to the time the verdict was returned. *Held,* that such interest should not be allowed. *Bennett v. Atchison, etc., Ry.* (1919, Iowa) 174 N. W. 805.

The court reasoned that the damages must be measured by the amount of support the widow would have received from the decedent, if he had lived his expectancy and that the greater part of this would not have been received until long in the future; and that as it was impossible to calculate the amount she would have received between the time of death and the verdict, interest on that amount must also be denied. The decision is in accord with cases collected in 22 *Cyc.* 1512, note 1.

DAMAGES—WRONGFUL DEATH—FUNERAL EXPENSES.—In an action for wrongful death the jury was instructed that the funeral expenses should be considered an element of the damages. *Held,* that such instruction was error. *Brady v. Haw* (1919, Iowa) 174 N. W. 331.

The reason of the decision was that death was inevitable, and that a burial would be given at death in a Christian country. Hence, the estate lost, as a proximate result of the defendant's wrong, only the use of the money during the expectancy. The theory advanced by the court seems satisfactory. See Demogue, *Validity of the Theory of Compensatory Damages* (1918) 27 YALE LAW JOURNAL, 585.

EQUITY—BILL OF DISCOVERY.—The plaintiff, after the expiration of his patent, brought an action to recover damages for infringement by the defendant. He also filed a bill of discovery praying that the defendant be ordered to state and produce the records of all the profits made from the sale of the article during the existence of the patent. *Held,* that the bill be denied. *Munger v. Firestone Tire & Rubber Co.* (Nov. 12, 1919) C. C. A. 2d, Oct. Term, 1919, No. 18.

A bill of discovery is allowed only to obtain the disclosure of facts in the possession of the defendant which are necessary to the existence of the cause of action relied on by the plaintiff. See 1 Pomeroy, *Equity Jurisprudence* (4th ed. 1918) sec. 201. Since the *amount* of damages was not essential, the bill in the instant case was properly refused. The court cited a quotation which suggested that a *subpoena duces tecum* would have been the proper remedy.

JUDGMENTS—RES JUDICATA—LATER EXISTING RIGHTS—WIDOW'S AWARD.—Just prior to their marriage, the plaintiff's husband conveyed his property to the defendant without consideration. Upon the death of the husband, the plaintiff probated his will and was granted a widow's award. The estate

being without funds, she brought an action to have the conveyance to the defendant set aside or the property charged with the award. *Held,* that the defendant should hold the property subject to the award. *Deke v. Huenkemeier* (1919, Ill.) 124 N. E. 381.

In a former action, brought by the plaintiff during the marriage, it was held that the defendant's deed was subject to the plaintiff's inchoate right of dower. *Deke v. Huenkemeier* (1913) 260 Ill. 131, 102 N. E. 1059. This decision is in accord with the general rule. See (1919) 28 YALE LAW JOURNAL, 701. The court properly overruled the defendant's contention that the earlier decision rendered the plaintiff's claim *res judicata,* no award having been made at that time.

SALES—BULK SALES ACT—STOCK OF MERCHANDISE—RESTAURANT SUPPLIES.—The plaintiff supplied goods to the defendant's restaurant. While the bill was still unpaid, the defendant sold the restaurant, including fixtures and canned goods on hand, to the co-defendants. The provisions of the Bulk Sales Act were not complied with and the plaintiff claimed that the sale was, therefore, void as to creditors. The Bulk Sales Act applied to "the sale in bulk . . . of a stock of merchandise." *Held,* that this was not a sale within the terms of the Act. *Swift & Co. v. Tempelos* (1919, N. C.) 101 S. E. 8.

The case raised the question whether a restaurant proprietor *sells* the food which he sets before his patrons; the court answered in the negative. Although the decisions are not entirely harmonious, it is believed the instant case is with the majority. The cases may be found discussed in COMMENTS (1914) 24 YALE LAW JOURNAL, 73; and (1918) 27 *ibid.,* 1069, note 3.

TAXATION—DOMICIL—INTENT TO CHANGE.—The petitioner claimed to have an immunity from paying Virginia taxes. The evidence showed that after leaving Ohio in 1900 with no intent to return, he traveled abroad. Upon his return he rented for a year and occupied an apartment in Washington, D. C. In 1905 he purchased a farm in Virginia and prior to 1915 spent the greater portion of each year there, although he continued to frequent health haunts at regular intervals and to enjoy repeated sojourns in Washington. While absent from his farm he resided at hotels and apartment houses. He paid a capitation tax in the county in which his farm was located and reported there his income for taxation. While away from Virginia he made out the federal income tax as a resident of Virginia. But when summoned to pay Virginia taxes, he claimed to be a resident of and domiciled in Washington. *Held,* that the petitioner was a resident of Virginia. *Bowen v. Commonwealth* (1919, Va.) 101 S. E. 232.

The court stated correctly that the case "involves fundamentally the problems of an accurate analysis of that complex aggregate of fact and intention, i. e., physical facts and mental facts which go to make up the legal concept of domicile." Such an analysis will be found in (1917) 26 YALE LAW JOURNAL, 796, a considerable portion of the language of which note was apparently embodied in the opinion of the principal case.

TAXATION—INHERITANCE TAXES—DEDUCTION OF FEDERAL ESTATE TAX BEFORE COMPUTING STATE INHERITANCE TAX.—In assessing the tax imposed by the Indiana Inheritance Tax Law, the circuit court allowed a deduction from the value of the decedent's property of the federal estate tax paid by the executor. The State appealed. *Held,* that the deduction was proper. *State v. First Calument T. & S. Bank* (1919, Ind. App.) 125 N. E. 200.

This decision accords with the view adopted by the majority of the jurisdictions which have passed upon the problem. *Contra,* see *In re Week's Estate*